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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/921,540	08/03/2001	Jane S. MacCutcheon	1264-001	6837

7590 01/17/2003  
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P.O. Box 6129  
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EXAMINER

LOCKETT, KIMBERLY R

ART UNIT	PAPER NUMBER
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2837

DATE MAILED: 01/17/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/921,540

Applicant(s)

MACCUTCHEON, JANE S.

Examiner

Kim R. Lockett

Art Unit

2837

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 51-121 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 51-121 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: .

### **DETAILED ACTION**

1. The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claims 99-122 have been renumbered 98-121.

### ***Claim Rejections - 35 USC § 112***

2. Claims 51- 121 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The phrase "said elements per se" renders the claims indefinite and fails to specifically claim the applicant's invention.

Regarding claims 63 and 64, the phrase "manifests as a plurality of radiating indicia, radiating from a base octave group" is not understood.

Regarding claims 59, 84, 80, 71, and 76 the phrase "sans pitch marking" is not understood or defined in the claims.

Regarding claims 72-76, the phrase "both conventional and alternative" renders the claims vague and indefinite.

Regarding claims 74, 79, and 83, the phrase "a plurality of sharp, flat notes is formed by the addition of sharp, and flat symbols to the natural note symbols of said sharp and flat notes".

Regarding claims 77-82 the phrase "and the like" renders the claims indefinite because the claims include elements not actually disclosed (those encompassed by "or the like"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

Regarding claims 64 and 65, the phrase "radiating indicia", is not understood.

Regarding claims 67, the phrase "continuing in that pattern manner..." renders the claims vague.

Claims 62 and 63 depend on claim 64. Claims must depend from a preceding claim. Appropriate correction is required.

Regarding claim 81, the phrase "as tangible, and electronic, and..." is not understood.

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 51-56 are rejected under 35 U.S.C. 102(b) as being anticipated by Coonce.

Coonce discloses the use of a system for facilitating learning and playing of music using a color coding system comprising a plurality of named colors, each color having a name beginning with a musical alphabet letter name(60) the colors paired to a group of notes of Western music, whereby color coding for notes and chords is provided.

Regarding claims 52-56, Coonce discloses a means for identifying octave groups and individual pitches (column 11, lines 6-22).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 60 and 61 rejected under 35 U.S.C. 103(a) as being unpatentable over Coonce in view of Risley.

Coonce does not disclose the use of a plurality of counting indicia.

Risley discloses a method and apparatus of teaching music using plurality of counting indicia.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the colors as taught by Coonce to include the numbered indicia as taught by Risley because the both represent musical notes.

5. Any inquiry of a **general nature or relating to the status of this application or filed papers** should be directed to the **Group receptionist whose telephone number is (703) 308-0956.**

Papers related to this application may be submitted to Group 2800 by facsimile transmission. Papers should be faxed to Group 2800 via the PTO 2800 Fax Center located at Crystal Plaza 4. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 O.G. 30 (November 15, 1989). The Group 2800 CP 4 Fax Center number is (703) 308-77(22 or 24). Fax numbers that provide an auto-reply fax receipt are: for before finals (703) 872-9318 and after finals (703) 872-9319.

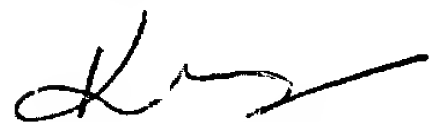
For assistance in **Patent procedure, fees or general Patent questions** calls should be directed to the **Patents Assistance Center (PAC) whose telephone number is 800-786-9199.** Assistance is also available on the Internet at [www.uspto.gov](http://www.uspto.gov).

For requesting **copies of Cited Art, Office Actions or the like, or General Problem solving,** calls should be directed to the **TC 2800 Customer Service Office** whose telephone number is **703-306-3329 or by fax at 703-306-5515.**

Art Unit: 2837

Any inquiry concerning **this communication or earlier communications** from the examiner should be directed to **Kim Lockett** whose telephone number is **(703) 308-7615**. The examiner can normally be reached on Monday through Thursday from 7:30 am to 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Nappi, can be reached on (703) 308-3370.



**Kim Lockett**  
**Patent Examiner**  
**Art Unit 2837**